

OPEN MEETING ITEM
ORIGINAL

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



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ARIZONA CORPORATION COMMISSION

DATE: August 12, 2005

DOCKET NO: RR-02635B-05-0442

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
(CONSTRUCT/CLOSE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 22, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for Open Meeting to be held on:

SEPTEMBER 7 AND 8, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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A handwritten signature in black ink, appearing to read "B. C. McNeil".
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF KINGMAN, ARIZONA ON
10 BEHALF OF THE BURLINGTON NORTHERN
11 SANTA FE RAILWAY COMPANY TO
12 CONSTRUCT A NEW RAILROAD CROSSING
13 UNDERPASS AT AIRWAY AVENUE AT AAR
14 DOT NO. 025634T AND THE CLOSURE OF THE
15 LOUISE AVENUE AT-GRADE CROSSING AT
16 AAR DOT NO. 025241K.

DOCKET NO. RR-02635B-05-0442

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: July 27, 2005

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. Robert Taylor, City Attorney, on behalf of the City
15 of Kingman; and

16 Ms. Diane Targovnik and Mr. Keith Layton, Staff
17 Attorneys, Legal Division, on behalf of the Utilities
18 Division of the Arizona Corporation Commission.

19 **BY THE COMMISSION:**

20 On June 17, 2005, the City of Kingman ("City") submitted to the Arizona Corporation
21 Commission ("Commission") a request for approval to construct a new public railroad crossing
22 underpass for the Burlington Northern Santa Fe Railway Company ("Railroad") track at Airway
23 Avenue in Kingman, Arizona, at AAR DOT No. 025634T and for the closure of the Louise Avenue
24 at-grade public railroad crossing at AAR Dot No. 025241K ("Application"). The City requested
25 approval to construct on behalf of the Railroad. Upon the completion of the construction on the new
26 underpass, the public at-grade crossing at Louise Avenue at AAR DOT No. 025241K will be closed.

27 On July 6, 2005, by Procedural Order, the Application was set for a hearing and the City was
28 ordered to notify any interested party of the Application and the hearing. The City was also ordered
to publish notice of the proceeding in a newspaper of general circulation in the City of Kingman.

1 On July 15, 2005, the City provided notice pursuant to the terms of the Procedural Order.

2 On July 27, 2005, a full public hearing was held before a duly authorized Administrative Law
3 Judge of the Commission at its offices in Phoenix, Arizona. The City and the Commission's Railroad
4 Safety Section appeared with counsel. At the conclusion of the hearing, the matter was taken under
5 advisement pending submission of a Recommended Opinion and Order to the Commission.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. On June 17, 2005, the City submitted to the Commission a request for approval to
11 construct a new public railroad crossing underpass for the Railroad track at Airway Avenue in
12 Kingman, Arizona, at AAR DOT No. 025634T and for the closure of the Louise Avenue at-grade
13 public railroad crossing at AAR Dot No. 025241K. The City requested approval to construct on
14 behalf of the Railroad. Upon the completion of the construction on the new underpass, the public at-
15 grade crossing at Louise Avenue at AAR DOT No. 025241K will be closed.

16 2. Although the new underpass will be constructed approximately two miles from the
17 Louise Avenue crossing which is to be closed, there is an existing underpass to handle traffic located
18 approximately only one-half mile away.

19 3. On July 15, 2005, the City provided notice of the Application and hearing thereon
20 pursuant to the Commission's Procedural Order. There have been no objections filed to the
21 Application.

22 4. A hearing was held as scheduled on July 27, 2005.

23 5. The Application provides for the City to construct a new underpass structure at
24 Airway Avenue so that auto traffic will travel beneath the Railroad's tracks. This will be a safer
25 crossing than the at-grade crossing at Louise Avenue because of the speed of train traffic at the
26 existing crossing which will be closed when the new underpass is opened.

27 6. The City will maintain the roadway in the underpass on Airway Avenue and the
28 Railroad will maintain the tracks in its right-of-way above the underpass.

1 7. Staff testified that the cost for the construction of the new crossing as provided in the
2 Application will be paid under the terms of an agreement between the City and the Railroad.

3 8. Staff has recommended that the Application be approved.

4 **CONCLUSIONS OF LAW**

5 1. The Commission has jurisdiction over the parties and over the subject matter of the
6 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
7 40-337.01.

8 2. Notice of the Application was provided in accordance with the law.

9 3. Construction of a new underpass at Airway Avenue, AAR DOT No. 025634T, is
10 necessary for the public's convenience and safety.

11 4. The closing of the public crossing at Louise Avenue, AAR DOT No. 025241K is in
12 the public interest.

13 5. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
14 recommended by Staff.

15 6. After the construction of the underpass, the Railroad should maintain its tracks in its
16 right-of-way in accordance with A.A.C. R14-5-104.

17 **ORDER**

18 IT IS THEREFORE ORDERED that the City of Kingman's Application is hereby approved.

19 IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway Company shall
20 complete the construction of the new underpass at Airway Avenue, AAR DOT No. 025634T, as
21 described in the Application, within fifteen months from the effective date of this Decision.

22 IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway Company shall
23 notify the Commission, in writing, within ten days of both the commencement and the completion of
24 the underpass, pursuant to A.A.C. R14-5-104.

25 IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway Company is
26 hereby permitted to close the Louise Avenue public crossing, AAR DOT No. 025241K, as described
27 in the Application upon the opening of the new underpass at Airway Avenue.

28 ...

1 IT IS FURTHER ORDERED that upon completion of the new underpass, the Burlington
2 Northern Santa Fe Railway Company shall maintain the track in its right-of-way in compliance with
3 A.A.C. R14-5-104.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7
8 CHAIRMAN

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Secretary of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2005.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mlj

1 SERVICE LIST FOR:

BURLINGTON NORTHERN SANTA FE RAILWAY

2 DOCKET NO.

RR-02635B-05-0442

3
4 Peter R. Johnson
City of Kingman
310 North Fourth Street
5 Kingman, AZ 86401

6 Colleen Deines, Manager
Public Projects
7 BNSF
740 East Carnegie Drive
8 San Bernardino, CA 92408

9 David Gibson
Arizona Department of Transportation
10 206 S. 17th Avenue, MD-064R
Phoenix, AZ 85007

11 Christopher Kempley, Chief Counsel
12 Legal Division
ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
Phoenix, Arizona 85007

14 Chief
15 Railroad Safety Section
ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
Phoenix, Arizona 85007